


DCFS INFO MEMO 2006 - 10 June 13, 2006

STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

To: Area Administrators/ Human Services Area Coordinators
Bureau Directors
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Section Chiefs/Licensing Chiefs
Tribal Chairpersons/Human Services Facilitators

From:  Burnie Bridge
Administrator

Re: 2005 Wisconsin Act 293, Changes impacting Declarations of Paternal Interest

Governor Jim Doyle recently signed 2005 Wisconsin Act 293 into law. Act 293 makes a number of changes in Chapter 48 that are being addressed in four Info Memos. This memo addresses one of the changes: Modifications to current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings. Act 293 can be found at the following web address: <http://www.legis.state.wi.us/205/data/acts/05Act293.pdf>.

Declaration of Paternal Interest

Act 293 modifies current law relating to declarations of paternal interest to require that a declaration be filed before the child's birth or within 14 days after the child's birth with one exception and permits a declaration to be revoked at any time. The exception is that if the alleged father receives an affidavit by a mother seeking to voluntarily terminate parental rights for her child under one year of age, he has 21 days after the date on which the notice was mailed to file a declaration. The declaration or revocation must be verified upon oath or affirmation, and in the case of a minor, both must also be signed by the parent or guardian of the minor. A declaration of paternal interest may be filed with the Department of Health and Family Services (DHFS) at no charge.

Act 293 requires DHFS to release information concerning declarations of paternal interest at the request of a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) in a CHIPS, JIPS, TPR, or adoption proceeding or at the request of a person authorized to file a CHIPS, JIPS, TPR, or adoption petition. The Department is also required to search its files to determine whether a person who may be the father of the child who is the subject of the proceeding or action has filed a declaration. If DHFS has a declaration on file, a certified copy of the declaration must be issued to the requester. If DHFS does not have a declaration on file, a certified statement must be issued to the requester that no declaration could be located. The Department is authorized to charge a reasonable fee for this activity.

Declarations must be kept confidential. Under Act 293 DHFS is no longer allowed to release declarations of paternal interest to the Department of Workforce Development or county child support agencies. However, statements acknowledging paternity, which are not the same as declarations of paternal interest, may be released without a court order under s. 59.53 (5) upon the request of that department or county child support agency pursuant to the program responsibilities under s. 49.22 or to any other person with a direct and tangible interest in the statement. A person who makes a false statement in a declaration, a revocation of a declaration, or a response to a declaration is guilty of a Class A misdemeanor, and a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to \$1000 or imprisoned for up to 90 days or both.

Act 293 also requires the Department of Health and Family Services (DHFS) to publicize information about declarations of paternal interest in a manner calculated to provide maximum notice to persons who might claim to be the father of a nonmarital child. Notification to the public must include the following

information:

- That the father of a nonmarital child may affirmatively protect his parental rights by filing a declaration of paternal interest;
- Procedures for and consequences of filing a declaration of interest; and
- Consequences of not filing a declaration of paternal interest.

Notification to Putative Fathers concerning TPR Proceedings

Under prior law, certain persons who may have been the father of a nonmarital child whose paternity had not been established were required to be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons included, in addition to a person who filed a declaration of paternal interest, a person who was alleged to be the father of the child or who, based on statements made by the mother or other information, may have been the father of the child, and a person who had lived in a familial relationship with the child and who may have been the father of the child. A person who received a summons and a petition in a TPR proceeding had standing to appear and contest the TPR petition and, if grounds for TPR were found, could present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

Act 293 changes the notification requirements to provide that the petitioner (other than a district attorney or corporation counsel) in a TPR hearing to terminate the rights of a person who may be the father of a nonmarital child under one year of age, may file with the TPR petition an affidavit signed by the child's mother that identifies or describes the father. If the mother does not provide an affidavit, notice to the father is provided as under prior law. If the mother cannot be found after a reasonably diligent search, the petitioner must attach a statement to the TPR petition regarding efforts made to locate the mother. If an affidavit is filed, the petitioner is required to notify any man alleged to be the father in the affidavit that he may file a declaration of paternal interest within 21 days after the date on which the notification was mailed. Notice of the TPR proceeding does not need to be provided to a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child. Notice of the TPR proceeding is only required to be provided to all of the following:

1. A person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child or within 21 days after the notice of his right to file a declaration is mailed, whichever is later.
2. A person who has lived in a familial relationship with the child and who may be the father of the child.

A mother who has completed an identification affidavit is prohibited from attacking a TPR on the basis that the father was not correctly identified.

Act 293 specifies that a person who may be the father of a nonmarital child whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, and therefore has the duty to protect his own rights and interests. A person who is not entitled to actual notice of a TPR proceeding does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations unless the person appears at the hearing, establishes paternity, and proves all of the following:

- That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.
- That the mother left the state without notifying or informing that person that she could be located in this state.
- That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.
- That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

These changes are effective July 1, 2006.

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DCFS MEMO WEB SITE: http://dhfs.wisconsin.gov/dcfs_info/

cc: County Child Protective Services Supervisors
County Foster Care Coordinators
Directors, Private Child Placing Agencies
Director of State Courts Office
Tribal Child Welfare Contact Persons

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